

AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT is made as of the 9th day of September in the year 2013, between **THE CITY OF LEESBURG, FLORIDA**, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the "CITY"), and **FRED FOX ENTERPRISES, INC.** whose address is P.O. Box 1047, St. Augustine, Florida 32085 (hereinafter referred to as the "CONTRACTOR").

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. Services. The CONTRACTOR shall perform CDBG Grant Administration services: **SEE ATTACHMENT "A"**. Nothing herein shall limit the CITY'S right to obtain proposals or services from other contractors for similar projects. The services to be performed under this agreement shall not exceed a total price of **\$56,000.00**. The cost of the services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price. Said price includes all labor, equipment and materials needed to complete the project as described herein.

2. Labor and Materials. All work will be done in a competent and workmanlike manner, using quality, new materials. CONTRACTOR shall guarantee all materials and workmanship furnished under this agreement for a period of 365 days from completion.

3. Insurance. The CONTRACTOR will maintain throughout this Agreement the following insurance: **SEE EXHIBIT "A"**.

A. The original of each such policy of insurance, or a complete duplicate, shall be delivered to the CITY by CONTRACTOR prior to starting work, together with evidence that the premiums have been paid.

B. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."

C. The CONTRACTOR shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.

D. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.

E. The required insurance shall not limit the liability of the CONTRACTOR. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONTRACTOR'S interests or liabilities, but are merely required minimums.

F. All liability insurance, except professional liability, shall be written on an occurrence basis.

G. The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.

H. Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.

I. Except for works' compensation and professional liability, the CONTRACTOR'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.

J. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:

**City of Leesburg
Attention: Mike Thornton, Purchasing Manager
P.O. Box 490630
Leesburg, Florida 34749-0630**

K. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.

L. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.

M. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.

N. The CONTRACTOR, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the CONTRACTOR'S liability coverage(s).

4. Indemnification. The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and CONTRACTOR shall indemnify CITY and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished to this project; any failure of performance of CONTRACTOR under this Contract; or the negligence of the CONTRACTOR in the performance of its duties under this Contract, or any act or omission on the part of the CONTRACTOR, his agents, employees, or servants. CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of their officers,

agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONTRACTOR'S duties under this Contract, or through the negligence of the CONTRACTOR in the performance of its duties under this Contract, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants.

If however, this agreement is a "construction contract" as defined in and encompassed by the provision of Florida Statutes § 725.06, then the following shall apply in place of the aforementioned indemnification provision:

The CONTRACTOR shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The liability of the CONTRACTOR shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the CONTRACTOR to indemnify the CITY shall be limited to acts, omissions, or defaults of the CONTRACTOR; any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the CONTRACTOR shall not be obligated to indemnify the CITY against losses arising from the gross negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the acts or omissions of the CONTRACTOR, or any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

5. Codes, Laws, and Regulations. CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

6. Permits, Licenses, and Fees. CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR'S performance of the Scope of Services.

7. Access to Records. CONTRACTOR will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the CITY during CONTRACTOR'S normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

8. Contingent Fees Prohibited. The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover,

the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

9. Payment. CITY shall compensate CONTRACTOR for their services in the following manner: **SEE ATTACHMENT "B"**.

10. Ownership of Documents. All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be liable or legally responsible to anyone for the CITY'S use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

11. Independent Contractor. The CONTRACTOR agrees that he or she is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the CONTRACTOR. CONTRACTOR will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The CONTRACTOR shall be solely and primarily responsible for his and her acts during the performance of this Agreement.

12. Assignment. Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

13. No Third Party Beneficiaries. This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

14. Jurisdiction. The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

15. Term and Termination.

(a) The term of this Agreement shall be through the completion of the Small Cities Community Development Block Grant Program as established by Request for Proposal 130542, or until the terms and conditions of this Agreement, including, but not limited to, its Scope of Services, have been completed, whichever occurs first, as determined by the CITY. Work shall commence within fifteen (15) calendar days after CITY issues a Purchase Order. All or part of this Agreement may be terminated by the CITY for its convenience on fifteen (15)

days written notice to the CONTRACTOR. In such event, the CONTRACTOR will be entitled to compensation for services competently performed up to the date of termination.

16. Nonappropriation. The CONTRACTOR understands and agrees that this Contract is subject to the availability of funds to the CITY to purchase the specified products/services. As used herein, a “nonappropriation” shall be defined as an occurrence wherein the CITY, in any fiscal period, does not allocate funds in its budget for the purchase of the specified products/services or other amounts owed pursuant to this Contract, from the source of funding which the CITY anticipates using to pay its obligations hereunder, and the CITY has no other funds, from sources another than ad valorem taxes, which it deems to be available to pay its obligations under this Contract. The CITY may terminate this Contract, with no further liability to the CONTRACTOR, effective the first day of a fiscal period provided that:

- (a) A nonappropriation has occurred, and
- (b) The CITY has provided the CONTRACTOR with written notice of termination, not less than fifteen (15) days before the proposed termination date.

Upon the occurrence of such nonappropriation the CITY shall not be obligated for payment for any fiscal period for which funds have not been appropriated.

17. Contact Person. The primary contact person under this Agreement for the CONTRACTOR shall be FRED FOX. The primary contact person under this Agreement for the CITY shall be KENNETH THOMAS.

18. Approval of Personnel. The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

19. Disclosure of Conflict. The CONTRACTOR has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the CONTRACTOR and his duties under this Agreement.

20. Authority to Obligate. Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature.

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor/Commissioner

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

FRED FOX ENTERPRISES, INC.

By: _____

Its: _____

Date: _____

Attachment “A”

SCOPE OF SERVICES

- I. **Work.** CONTRACTOR shall perform all work in accordance with the Contract Documents. Furnish all materials, equipment, tools, labor and supervision necessary to complete the CDBG Grant Administration services as required by Request for Proposals (RFP) 103542.
- II. **General Conditions.** The General Terms and Conditions from RFP 103542 are incorporated by reference and made a part hereof.
- III. **Respondent Proposal.** The proposal submitted by the Fred Fox Enterprises, Inc. August 6, 2013, is incorporated by reference and made a part hereof.
- IV. **Payment.** As invoiced in accordance with the City’s standard payment procedures.
- V. **Additional administrative contract clauses.** As required by the Florida Department of Community Affairs.
 1. Termination (Cause and/or Convenience)
 - (a) This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
 - (b) This contract may be terminated in whole or in part in writing by the local government for its convenience, provided that the other party is afforded the same notice and consultation opportunity specified in I(a) above.
 - (c) If termination for default is effected by the local government, an equitable adjustment in the price for this contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the local government because of the contractor’s default.
 - If termination for convenience is effected by the local government, the equitable adjustment shall include a reasonable profit for services or other work performed for which profit has not already been included in an invoice.
 - For any termination, the equitable adjustment shall provide for payment to the contractor for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate.
 - (d) Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise) and (2) deliver or otherwise make available to the

local government all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the contractor in performing this contract, whether completed or in process.

- (e) Upon termination, the local government may take over the work and may award another party a contract to complete the work described in this contract.
- (f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the local government. In such event, adjustment of the contract price shall be made as provided in paragraph (c) above.

2. Remedies

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration if the parties mutually agree or in a Florida court of competent jurisdiction.

3. Access to Records

The local government, the Florida Department of Community Affairs, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

4. Retention of Records

The contractor shall retain all records relating to this contract for six years after the Department of Community Affairs has accepted the final closeout documents for the grant from the local governments and all other pending matters are closed.

5. Environmental Compliance

If this contract exceeds \$100,000, the contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C.1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 C.F.R. Part 15). The contractor shall include this clause in any subcontracts over \$100,000.

6. Energy Efficiency

The contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

7. Conflicts with Other Clauses

If this contract contains any clauses which conflict with the above clauses, then this contract will be governed by the clause(s) in this section of the contract.

Attachment “B” Price/Fee Schedule

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| 1. | <u>Prepare for Environmental Review</u>
<ul style="list-style-type: none"> • Prepare the Environmental Review including all required mail-outs. • Prepare the require advertising. | \$3,500.00 |
| 2. | <u>Conduct Direct Beneficiary Survey</u>
<ul style="list-style-type: none"> • Conduct a follow up door to door survey of all households in the electrical undergrounding service area. | \$7,500.00 |
| 3. | <u>Attendance at the DEO Project Monitoring Visits as Well as the Completion of all required Reports</u>
<ul style="list-style-type: none"> • Prepare Project Amendments (Estimate 2). • Prepare all required advertisements. • Participate in DEO Monitoring Visits (Estimate 2). • Prepare all periodic reports required for the program. • Prepare the Preliminary Contract and Final close-out documents for the project. | \$5,000.00 |
| 4. | <u>Project Administration/Financial Supervisor</u>
<ul style="list-style-type: none"> • Create and maintain an independent set of financial records for the project • Prepare all “Requests for Funds” for the project. • Coordinate 503 (handicapped accessibility) requirements with the City. • Carry out required quarterly Fair Housing Activities. • Coordinate with DEO on any new program requirements. | \$15,000.00 |
| 5. | <u>Coordinate with the Engineer and Contractor</u>
<ul style="list-style-type: none"> • Coordinate with the engineer on all Federal and State requirements associated with the project. • Participate in Pre-Bid Conference for the project. • Obtain the contractor approval from DEO. • Coordinate the Pre-Construction conference with the engineer. • Review contractor package for the correct completion of all grant required information. • Insure “Notice to Proceed” is issued to the contractor. • Conduct required Employee Interviews. • Review and approval contractor payroll requests along with the Engineer. • Review and recommend approval of all change orders as they relate to DEO contract compliance. • Insure all Release of Liens are obtained and all “Notice of Commencements” are filed. | \$20,000.00 |

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| 6. | <u>Community Coordination</u> | \$2,500.00 |
| | <ul style="list-style-type: none">• Meet with the Citizen's Advisory Task force to keep them updated on the progress of the project.• Meet with the City Commission and City Staff on a regular basis to keep them updated on the progress of the project. | |
| 7. | <u>Coordination with DEO Staff</u> | \$2,500.00 |
| | <ul style="list-style-type: none">• Maintain continuous telephone and written coordination with DEO staff to insure a smooth flow of the project through the state system• Walk any required amendments and approvals through DEO to facilitate a quick approval. | |